Supreme Court, U.S.
FILED
JUL 25 1980
MICHAEL RODAK, JR., CLERK

No. 79-512

# In the Supreme Court

OF THE

# United States

OCTOBER TERM, 1979

SCINDIA STEAM NAVIGATION CO., LTD.,
*Petitioner,*

vs.

LAURO DE LOS SANTOS and SEATTLE STEVEDORE CO.,
*Respondents.*

**On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

## JOINT APPENDIX

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(2)

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## JOINT APPENDIX

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The following opinions have been omitted in printing this appendix because they appear on the following pages in the appendix to the printed Petition for Writ of Certiorari:


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| A. Opinion of District Court Granting Defendant's Motion for Summary Judgment | A-1 |
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## RELEVANT DOCKET ENTRIES:

### U.S. DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON

| | |
|---|---|
| *1974* | |
| November 27 | Filed complaint and issued summons. |
| *1975* | |
| October 23 | Filed deposition of Lauro de los Santos. |
| December 11 | Filed answer. |
| *1976* | |
| March 24 | Filed petition in intervention, Seattle Stevedore Co. |
| March 31 | Filed deposition of Lester Hawran.<br>Filed deposition of Alvin H. Botler. |
| April 23 | Filed pretrial order. |
| April 27 | Filed motion for summary judgment. |
| June 4 | Defendant Scindia's motion for summary judgment under advisement. |
| September 1 | Filed and entered memorandum and order granting summary judgment of dismissal.<br>Filed and entered judgment granting defendant's motion for summary judgment. |
| September 3 | Filed motion to reconsider and/or alter judgment. |
| September 27 | Entered order noting on the Court's own motion, plaintiff's motion to reconsider and/or alter judgment to be set for today. Entered order denying plaintiff's motion to reconsider and/or alter judgment. |
| September 28 | Filed plaintiff's notice of appeal. |

U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

| | |
|---|---|
| *1976* | |
| October 18 | Docketed cause and entered appearances of counsel. |
| December 17 | Filed 25 appellant's opening briefs. (12/16/76) |
| *1977* | |
| February 8 | Filed 25 appellee's briefs. (2/7/77) |
| July 14 | Filed as of 7/11/78, appellant's additional authorities. (received 6/26) |
| July 20 | Argued and submitted to Duniway, Choy, CJJ and Grant, DJ. |
| *1979* | |
| May 2 | As of May 1, ordered opinion filed (Duniway) and judgment to be filed and entered.<br>As of May 1, filed opinion—reversed and remanded.<br>As of May 1, filed and entered judgment. |
| May 15 | Filed original and 24 appellee's petition for rehearing and request for rehearing en banc. 5/15 |
| July 6 | As of June 28, ordered opinion (per curiam) on petition for rehearing filed and judgment to be filed and entered.<br>As of June 28, filed opinion—the petition for rehearing is denied. The suggestion for a rehearing en banc is rejected.<br>As of June 28, filed and entered judgment. |

United States District Court
Western District of Washington
at Seattle

No. C74-720S

COMPLAINT

JURY DEMAND

Comes now the plaintiff and for cause of action against the defendant sets forth and alleges as follows:

I.

That at all times herein mentioned the defendant Scindia Steam Navigation Co., Ltd. of Bombay, India was the owner of the M/S JALARATNA, which vessel at all times herein mentioned was engaged in the transportation of cargo in foreign commerce from the country of India and the Far East to ports of the United States and at all times herein mentioned was represented by Transmarine Navigation Corp., agent, for the transaction of its business at Seattle, Washington.

II.

That on or about December 10, 1972 plaintiff was employed as a longshoreman by the Seattle Stevedoring Co. on the vessel M/S JALARATNA which vessel was moored at Fisher Flouring Mills dock, engaged in loading sacks of bulgar wheat for the Far East. That plaintiff and other longshoremen were assigned to said vessel and were working the night shift in the No. 3 hatch, lower hold, stowing sacks of bulgar wheat which were being brought aboard said vessel on pallet boards by the winches, 70 sacks in a load, each sack weighing about fifty pounds. That at about

8:45 PM a load of bulgar was brought aboard the vessel into the No. 3 hatch and while the load was being lowered several sacks fell off the load into the square of the hatch, which sacks broke and scattered the bulgar in the square of the hatch. That plaintiff was ordered to clean up the broken sacks of bulgar in the square of the hatch and while he and his partner were so engaged the balance of the load which the winch was attempting to hold in the upper part of the hatch, but because of the instability of the winch, three or four additional sacks fell from the load being so held and struck the plaintiff on the head, neck and upper back, causing injuries to his head, neck, cervical spine and back.

III.

That the proximate cause of the injuries and damages to the plaintiff was the carelessness and negligence of the defendant and/or defendant's employees of the vessel M/S JALARATNA in the following particulars:

(1) In the failure of defendant to provide the plaintiff with a safe place to work aboard said vessel in and about the hatch where plaintiff was employed at the time of the accident.

(2) In the failure of defendant to properly supervise the loading of the sacks of bulgar onto the pallet boards and the lifting of the pallet boards by the winch into the No. 3 hatch of said ship at the time of the accident when defendant knew, or should have known, that the sacks of bulgar were not properly secured on the pallet boards when having said load lifted by the winch which was unstable and was unable to properly control the load of bulgar

which was being lifted into the hatch at the time of the accident and the injuries to the plaintiff.

(3) In the defendant in permitting the sacks of bulgar to fall and drop onto the plaintiff who was employed in the hatch area cleaning up the broken sacks of bulgar which had fallen into the hatch.

IV.

That as a proximate result of the negligence and carelessness of the defendant and/or defendant's employees, as alleged herein, plaintiff sustained severe injuries to his neck, including fractures of the spinous processes of his cervical spine and injury to the dorsal spine, shoulders, arms and head, damage to the vertebral bodies and the discs of the cervical spine with injury to the muscles, nerves and tissues. That the injury to plaintiff's head caused plaintiff to suffer a concussion of the brain and severe headaches. As a result of said injuries to plaintiff's head, neck, cervical and dorsal spine and body he was removed from the job and taken to the hospital where he was treated for a substantial period of time and was then released from the hospital to rest for a couple of months. Plaintiff then attempted to return to employment and in the course of his employment he continued to work under pain and distress of his neck, cervical spine and head and finally his condition grew worse and he had to leave his employment. In April, 1974 he had to return to the hospital where a myelogram was performed on his cervical spine which demonstrated a severe defect in the area of the Cervical 5-6 vertebra. On April 17, 1974 an anterior cervical disectomy and fusion was carried out at Saint Frances

Cabrini Hospital, Seattle. That as a result of said injuries to his neck and cervical spine plaintiff has continued to have pain and distress and restriction of motion of his spine and that he works under a handicap because of the pain and distress and limitation of mobility of his spine. At the time of injury plaintiff was 52 years of age and was employed as a longshoreman earning and capable of earning the sum of $1,000 per month. That by reason of said injuries the plaintiff has sustained loss of earnings and will continue to sustain loss of earnings and wage earning capacity for a long time in the future. That as the result of said injuries, the pain and suffering plaintiff has experienced since the time of the accident, his future pain and suffering, his loss of earnings, future loss of earnings, and the permanent disability that he has sustained as the result of said injuries to his neck, spine and head, plaintiff has been damaged in the sum of $150,000.00.

V.

That as a proximate result of the negligence and carelessness of the defendant and/or defendant's employees, as alleged herein, plaintiff has incurred medical and hospital expenses to date in the approximate amount of $2,500.00 and plaintiff requests permission to amend his pleadings at the time of trial to accurately set forth the total amount of medical and hospital expenses he has incurred as a result of the injuries described herein.

VI.

That as a proximate result of the negligence and carelessness of the defendant and/or defendant's employees, as alleged herein, plaintiff sustained loss of earnings from the

time of injury to the present in the amount of approximately $7,500.00 and that he will continue to have loss of earnings in the future. Plaintiff requests permission to amend his pleadings at the time of trial to accurately set forth the total amount of his loss of earnings as established by the evidence.

WHEREFORE, plaintiff prays for judgment against the defendant as follows:

1. General damages in the amount of $150,000.00;

2. Special damages in the amount of $10,000.00, together with what other and further special damages may be established at the time of trial;

3. For his costs and disbursements herein incurred.

JACKSON, ULVESTAD, GOODWIN
& GRUTZ

United States District Court
Western District of Washington
at Seattle

No. C74-720S

ANSWER

COMES NOW the defendant and in answer to plaintiff's complaint, admits, denies and alleges as follows:

I

Answering paragraph I of plaintiff's complaint, defendant admits it was the owner of the JALARATNA, which vessel was engaged in the transportation of cargo in foreign commerce. Except as so admitted, defendant denies all other allegations in said paragraph.

II

In answer to paragraph II of plaintiff's complaint, defendant admits that on or about December 10, 1972 plaintiff was employed as a longshoreman by Seattle Stevedoring Co. aboard the JALARATNA which was moored at Fisher Flour Mill and that sacks of bulgar wheat were loaded in hatch No. 3 by longshoremen. Except as so admitted, defendant denies each and every allegation contained in paragraph II of plaintiff's complaint.

III

Answering paragraph III, IV, V and VI of plaintiff's complaint, defendant denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

By way of further answer and in affirmative defense of plaintiff's claim, defendant further alleges:

IV

If plaintiff suffered any injury while aboard the JALARATNA as alleged, said injury was caused solely by the negligence of plaintiff

V

Plaintiff's action is barred by the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.

WHEREFORE, having fully answered the allegations of plaintiff's complaint, defendant prays that said complaint be dismissed with prejudice and that defendant recover its costs, disbursements and attorneys' fees herein.

Dated this 9th day of December, 1975.

HOWARD, LE GROS,
BUCHANAN & PAUL

United States District Court
Western District of Washington
at Seattle

No. C74 720S

## PRE TRIAL ORDER

As a result of pretrial conference heretofore had, whereat plaintiff was represented by Roy E. Jackson, of the firm of Jackson, Ulvestad, Goodwin & Grutz, and the defendant was represented by Howard, Le Gros, Buchanan & Paul, Robert H. Madden of counsel and the Intervenor, Seattle Stevedore Co. was represented by Williams, Lanza, Kastner & Gibbs, Paul C. Gibbs of counsel, the following issues of fact and law were framed and exhibits identified:

## JURISDICTION

Jurisdiction is vested in this court by virtue of diversity of citizenship, 28 U.S.C.A. § 1332 and § 1333, with the right of jury trial on the civil side of the court.

## ADMITTED FACTS

The following facts are admitted by the parties:

1. That on about December 10, 1972, plaintiff, Lauro de los Santos, was employed as a longshoreman by Seattle Stevedoring Company aboard the vessel M/S JALARATNA, which vessel was moored at the Fisher Flouring Mills dock in Seattle, engaged in loading sacks of bulgar wheat for the Far East.

2. That the defendant Scindia Steam Navigation Co. Ltd. of Bombay, India, is and was at all times material herein the owner of the vessel M/S JALARATNA.

3. That plaintiff, Lauro de los Santos, was working as a longshoreman on the night shift in the No. 3 hatch, commencing at 7:00 P.M. on December 10, 1972, engaged in stowing the sacks of bulgar wheat being brought in by the winch into said hatch and worked continuously in the No. 3 hatch from 7:00 P.M. until his accident at 8:45 P.M.

4. A short time prior to the accident a pallet board containing about 70 sacks of bulgar wheat, each sack weighing about 50 pounds, was lowered into the No. 3 hatch, struck the pallet jack, spilling about half of the sacks into the hatch.

5. Following the spilling of the sacks from the pallet board, the balance of the load was lifted by the winch-driver, upon the instructions of the hatchtender, who was supervising the loading operation, about fifteen feet to the coaming of the hatch and held there while plaintiff and his fellow worker were engaged in cleaning up the spilled sacks from the deck of the hatch.

6. After about ten minutes, while plaintiff and his fellow worker were still engaged in cleaning up the spilled sacks of wheat, several more sacks fell from the raised pallet board into the No. 3 hatch, striking plaintiff and injuring him.

7. That Seattle Stevedore Company, plaintiff's employer, was engaged by defendant as an independent contractor, to load the vessel and that Seattle Stevedore Company, through its employees, and particularly the foreman, hatchtender and winchdriver, was in control of the loading at the No. 3 hatch on the evening of plaintiff's accident.

## DISPUTED FACTS

The plaintiff contends as follows:

(a) Plaintiff denies each contention of the defendant not specifically admitted herein.

(b) That on the evening of December 10, 1972, plaintiff Lauro de los Santos, along with Lester Hawran, Alvin H. Botler and James B. Garrett, was assigned to work as longshoremen aboard the vessel M/S JALARATNA, while said vessel was moored at the Fisher Flouring Mills dock and engaged in loading bulgar wheat for the Far East.

(c) That upon arriving at the vessel the plaintiff and his fellow longshoremen were assigned to loading the No. 3 hatch with bulgar wheat, working the night shift.

(d) That the sacks of bulgar wheat, weighing about 50 pounds each, were brought aboard the vessel by electric winch on pallet boards carrying about 70 sacks in a load.

(e) That at about 8:45 P.M. Lester Hawran was operating the winch, which winch was about 35 feet above the No. 3 hatch located in such a position that the winch driver could not observe the men working in the No. 3 hatch.

(f) That a pallet load of bulgar was being lifted into the hatch from the dock by the winch operated by Lester Hawran and as the load was being lowered into the hatch the brakes on the winch failed permitting the load to strike with great force the pallet jack in the hold on which it was to be positioned, resulting in half of the sacks to fall off the pallet board. That in order to clean the runway for the pallet jack the hatchtender had the balance of the load lifted up to near the hatch coaming to be held there until

plaintiff and James B. Garrett could move the spilled sacks from the area where they had fallen into the hatch.

(g) That during the period of time the load was being held by the winch near the hatch coaming waiting for the spilled sacks to be cleared from the hatch runway, the winch operator was having difficulty with the creeping faulty winch, which permitted the load on the pallet board to move up and down. That after the load was held in that position for about ten minutes several of the sacks on the pallet board became loose and dropped into the hold and struck plaintiff on the neck and back, causing injuries to his neck, back and spine.

(h) That as a result of the injuries sustained by plaintiff an accident report was filed in his behalf.

(i) That plaintiff underwent medical treatment for the severe injuries to his neck, including fractures of the spineous processes of his cervical spine, injury to his dorsal spine, shoulders, arms and head, damage to the vertebral bodies and the discs of the cervical spine with injury to the muscles, nerves and tissues. That the injury to his head caused plaintiff to suffer a concussion of the brain and severe headaches. That as a result of his injuries plaintiff was taken to the hospital where he was treated for a period of time and then released to rest at home for a couple of months.

(j) That plaintiff attempted to return to employment, but continued to suffer pain and distress in his neck, cervical spine and head. His condition grew worse and he was forced to leave his employment.

(k) In April, 1974 plaintiff returned to the hospital where a myelogram was performed on his cervical spine which demonstrated a severe defect in the area of the cervical 5-6 vertebra. On April, 1974 an anterior cervical disectomy and fusion was carried out at Saint Frances Cabrini Hospital in Seattle.

(l) That plaintiff, as a result of said injuries, continues to have pain and distress and restriction of motion of his spine and works under a handicap because of the pain and distress and limitation of mobility of his spine.

(m) That at the time of his injury plaintiff was 52 years of age, earning and capable of earning $1,000.00 per month.

(n) That as the result of his injuries, the pain and suffering he has experienced from the time of the accident, his future pain and suffering, his loss of earnings and future loss of earnings, and the permanent disability that he has sustained plaintiff has been damaged in the sum of $150,000.00.

(o) That plaintiff has sustained loss of earnings as the result of his injuries in the amount of approximately $10,000.00 and he will continue to suffer loss of earnings in the future.

(p) That as a result of his injuries plaintiff has incurred hospital and medical expenses in the amount of approximately $3,500.00.

(q) That the injuries experienced by plaintiff were the proximate result of the negligence and carelessness of the defendant and/or defendant's employees in the following particulars:

(1) In failing to provide plaintiff with a safe place to work aboard the vessel M/S JALARATNA.

(2) In permitting the loading of sacks of bulgar wheat aboard the vessel using faulty and malfunctioning winch in the course of the loading operation.

(3) In permitting a winch to be faulty and malfunctioning when holding a part of the load of bulgar on the pallet board, which faulty and malfunctioning winch permitted the sacks to fall from the pallet board into the hatch and strike plaintiff.

(4) In operating and permitting the operation of a defective winch when defendant knew or should have known that the winch was defective and would cause injury to plaintiff.

(5) In the failure of defendant to have said faulty and malfunctioning winch repaired before starting the loading operation when defendant knew, or should have known, that the failure to repair the winch would cause injury to longshoremen employed in loading the vessel, particularly the plaintiff.

(4) The defendant contends as follows:

(a) Defendant denies each and every allegation of plaintiff not specifically admitted herein.

(b) Plaintiff's accident was caused by his own negligence in the following regards:

(1) in knowingly working under a swinging, suspended pallet load of loose, disarranged sacks of wheat which he knew, or reasonably should have known, to be unsafe, in utter disregard for his own safety;

(2) in failing to keep a lookout for his own safety from the pallet load overhead;

(3) in failing to make sure that one of his fellow longshoremen was keeping a lookout for his safety;

(4) in failing to unload sacks remaining on the pallet before the pallet was raised;

(5) in failing to make sure that the sacks on the pallet were properly secured before the pallet was raised;

(6) in failing to see to it that the remaining pallet load was removed to a safe place—either in the hold, or on the deck, or on the dock—before commencing to pick up the spilled sacks.

(c) Plaintiff's accident, in combination with plaintiff's own negligence, was caused by the negligence of plaintiff's fellow longshoremen, and in particular the winch driver and hatch tender, in the following regards:

(1) in instructing or permitting plaintiff to work underneath a swinging pallet load of loose, disarranged sacks of cargo which they knew, or reasonably should have known, to be unsafe;

(2) in failing to warn plaintiff of the danger of working under the pallet;

(3) in failing to keep a proper lookout for plaintiff's safety while working;

(4) in failing to unload the sacks remaining on the pallet before raising it;

(5) in failing to secure the sacks remaining on the pallet before raising it;

(6) in failing to remove the remaining pallet load to a safe place, such as elsewhere in the hold, or on

the ship's deck, or on the dock, before instructing or permitting plaintiff to clean up the spilled sacks.

(d) Defendant denies that the ship's winches were defective or in any way contributed to the accident. However, even if the winches had previously worked with difficulty as is apparently alleged by plaintiff and his fellow longshoremen, then with such condition known and obvious to plaintiff and his fellow workers for nearly an hour and 45 minutes before the accident, it became all the more incumbent upon plaintiff and his fellow workers to avoid working under the suspended pallet load. The accident was easily avoidable by any number of means within the exclusive control of plaintiff and/or his fellow workers, and the negligence of plaintiff and his fellow workers was a supervening, superceding cause of the accident whatever the condition of the winches.

(e) Seattle Stevedore Co., plaintiff's employer, was engaged by defendant as an independent contractor, expert in loading the vessel, and was in exclusive possession, control, and supervision of #3 hatch and loading operations being conducted there on the evening of the accident.

(f) Plaintiff voluntarily assumed the risk of injury when he commenced working under the suspended pallet load, knowing the sacks remaining thereon to be loose and disarrayed, and believing the ship's winches to be defective and unsafe.

## ISSUES OF FACT

The following are the issues of fact to be determined by the jury:

1. Was the defendant and/or its employees careless and negligent, as contended by plaintiff?

2. Were the winches being operated at the time of plaintiff's injury faulty and defective? If so, did such faulty and defective winches contribute to plaintiff's injury?

3. Was plaintiff contributorily negligent as contended? If so, by what percentage should any award to the plaintiff be reduced because of the contributory negligence?

4. What are plaintiff's damages proximately resulting from the carelessness and negligence of the defendant and/or its employees, if any?

5. Was plaintiff's accident caused by the negligence of his fellow longshoreman? If so, should intervenor be denied recovery of its claimed lien due to its "unclean hands?"

6. Did plaintiff assume the risk of his own injury in working under a suspended pallet load of cargo which he knew, or reasonably should have known, to be unsafe?

7. Was plaintiff negligent per se in working under a suspended pallet load of cargo which he knew, or reasonably should have known, to be unsafe and in violation of longshore safety regulations?

Plaintiff objects to Issues Nos. 5, 6 and 7 for the reason that they are not applicable because they are not germain to the issues involved in this case. Assumption of risk is not an issue under the General Maritime Law. Plaintiff's injuries were caused by faulty and defective winches which were used at the time of loading sacks of bulgar

wheat during the loading operation and, further, that plaintiff was not negligent per se.

## ISSUES OF LAW

The following are the issues of law to be determined by the court:

1. The issues of law will be those arising in applying the maritime law to the facts of the case.

## EXPERT WITNESSES

The names and addresses of the expert witnesses to be used by each party at the trial are as follows:

(1) On behalf of plaintiff:

(a) Expert witness on the maintenance and repair and operation of winches, name to be supplied.

(2) On behalf of defendant:

(a) Physician to examine plaintiff prior to trial, name to be supplied.

(b) Expert on longshore safety practices, name to be supplied.

## OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial, and the general nature of the testimony of each, are:

(a) On behalf of plaintiff:

1. Plaintiff, Lauro de los Santos
2. Alvin H. Botler,
   834 N. E. 195th,
   Seattle, Washington.

3. A. Bernard Gray, M. D.
   704 Cobb Medical Center,
   Seattle, Washington.

4. James B. Garrett,
   2327 44th S. W.
   Seattle, Washington.

5. John C. Gibson, M. D.
   1120 Cherry Street,
   Seattle, Washington.

6. Edward Reifel, M. D.
   The Mason Clinic,
   1118 Ninth Avenue,
   Seattle, Washington.

7. Foreman, McNaughton

8. Lester Hawran,
   347 N. W. 87th,
   Seattle, Washington 98107.

(b) On behalf of defendant:

1. Any witness named, but not called by plaintiff.

2. Ship's master (if available)

3. Ship's chief officer (if available)

## EXHIBITS

(a) The exhibits listed below may be received in evidence without objection:

## PLAINTIFF'S OBJECTIONS

1. Report of accident made to Bureau of Employees Compensation following injury of December 10, 1972;
2. Copy of logbook of the vessel M/S JALARATNA for the month of December, 1972;
3. Hospital records of Virginia Mason Hospital;
4. Hospital records of St. Frances Cabrini Hospital;
5. X-rays taken at Virginia Mason Hospital;
6. X-rays taken under direction of Dr. John Gibson;
7. X-rays taken under direction of Dr. A. Bernard Gray;
8. OSHA Regulations, Maritime and Longshoremen;
9. Plaintiff's earning records for the years 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975 and 1976 to date;
10. PMA earning records;
11. Bills incurred by the plaintiff covering his care and treatment:

| | |
|---|---|
| The Mason Clinic | $ 444.25 |
| St. Frances Cabrini Hospital | 1,254.94 |
| A. Bernard Gray, M.D. | 373.50 |
| John Gibson, M.D. | 770.00 |
| Virginia Mason Hospital | 599.90 |
| Drug Bills | |

## DEFENDANT'S EXHIBITS

A-1 PMA Safety Code

A-2 Supercargo daily report for night shift 12/10/72 (if available)

A-3 Stevedore Hatch logs for night shift 12/10/72 (if available)

A-4 Capacity plan for JALARATNA

(b) Admissibility of the following exhibits is denied for the reasons set forth in respect to each exhibit:

DEFENDANT'S EXHIBITS

A-5 Certified copy of complaint in De Los Santos v. Matson Navigation Cause #258 71C2

A-6 Copy of release in De Los Santos v. Matson Navigation, Cause #258 71C2.

Reason—plaintiff does not deny he sustained previous injury and was compensated therefore. Irrelevant and self serving.

(c) The authenticity of the exhibits listed below is denied. It is also contended the exhibits are inadmissible for additional reasons set forth in respect to each exhibit:

PLAINTIFF'S EXHIBITS

12. Sketch of the vessel M/S JALARATNA illustrating area where plaintiff was injured and illustrating the location of the winch involved.

Reason—hearsay, inaccuracies, lack of foundation, self-serving, qualification of drawer, irrelevant.

ACTION BY THE COURT

The Court has ruled that:

(a) Trial briefs shall be submitted to the court on or before May 5, 1976.

(b) Jury instructions requested by any of the parties shall be submitted to the Court on or before May 5, 1976.

(c) Suggested questions of any party to be asked the jury by the court on voir dire shall be submitted to the court on or before May 5, 1976.

(d) That Seattle Stevedore has a lien in the amount of $9,046.76.

The foregoing pretrial order has been approved by the parties hereto, as evidenced by the signature of their counsel hereon, and this order is hereby entered, as a result of which the pleadings pass out of the case and this Pretrial Order shall not be amended except by order of the Court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this 22nd day of April, 1976.

Walter T. McGovern
United States District Judge

Form Approved:

Roy E. Jackson
Jackson, Ulvestad, Goodwin & Grutz
Attorneys for plaintiff

Howard, Le Gros, Buchanan & Paul

By Robert H. Madden
Attorneys for defendant

Williams, Lanza, Kastner & Gibbs

By Paul C. Gibbs
Attorneys for Intervenor.

United States District Court
Western District of Washington
at Seattle

No. C74-720S

JUDGMENT

This matter having come on for consideration before the Court, Honorable Walter T. McGovern, Chief United States District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered, granting defendant's Motion for Summary Judgment of Dismissal,

IT IS HEREBY ORDERED AND ADJUDGED, this case is hereby dismissed.

Dated this 1st day of September, 1976.

JOHN A. McLELLAN
Deputy United States District
Court Clerk

United States Court of Appeals
For the Ninth Circuit

No. 76-3225
DC CV 74-720S McG

JUDGMENT

Amended Mandate as to Costs—07/25/79

Appeal from the United States District Court for the Western District of Washington (Seattle).

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Western District of Washington (Seattle) and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the ..... judgment of the said District Court in this cause be, and hereby is reversed and remanded. Costs in this court in favor of the appellant and against the appellee.

Costs:

| | |
|---|---|
| Brief for the Appellant ..... | $682.02 |
| Total ..... | $682.02 |

Filed and entered May 1, 1979.